

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Homer T. McCrary,

NO. C 08-01592 RMW

NO. C 06-04174 JW

Plaintiff,

v.

**ORDER RE: RELATED CASE
DETERMINATION**

Carlos M. Gutierrez, et al.,

Defendants.

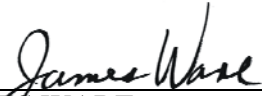
Homer T. McCrary (“Plaintiff”) brings this action against Carlos Gutierrez, Secretary of Commerce, the National Marine Fisheries Service (“NMFS”), and Russ Strach, Assistant Administrator of the NMFS (collectively, “Defendants”) for alleged violation of the Endangered Species Act, 16 U.S.C. § 1531, *et seq.* Before the Court is a *Sua Sponte* Judicial Referral for the Purpose of Determining whether this case is related to Homer T. McCrary v. Carlos Guterrez, et al., C 08-01592 RMW. *See* Civ. L.R. 3-12. (*See* 08-01592 RMW, Docket Item No. 18.)

Under Civ. L.R. 3-12(a), cases are related if: 1) they “concern substantially the same parties, property, transaction, or events” and 2) it “appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.”

Both 08-01592 RMW and 06-4174 JW involve identical parties and substantially similar claims. However, 06-4174 JW was dismissed at an early stage of the litigation for lack of subject matter jurisdiction; the Court did not consider the merits of Plaintiff’s claims or review any

1 significant amount of the administrative records provided by the parties. Thus, there will no
2 duplication of labor and expense or conflicting results if the cases are conducted before a different
3 judge. Accordingly, the Court does not find that the cases are related within the meaning of Civ.
4 L.R. 3-12.

5
6 Dated: August 7, 2008



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Andrea Mocsny Miller amiller@NMLawFirm.com

James L. Buchal counsel@buchal.com

3 Robert Pendleton Williams robert.p.williams@usdoj.gov

4 **Dated: August 7, 2008**

Richard W. Wieking, Clerk

6 **By: /s/ JW Chambers**

Elizabeth Garcia

Courtroom Deputy

United States District Court

For the Northern District of California

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